

1 **DAVID S. LAVINE**, CA State Bar No. 166744

[dave@legalforcelaw.com](mailto:dave@legalforcelaw.com)

2 **NICHOLAS M. GEROVAC**, CA State Bar No. 289910

[nick@legalforcelaw.com](mailto:nick@legalforcelaw.com)

3 **LEGALFORCE RAJ ABHYANKER, P.C.**

1580 W. El Camino Real, Suite 13

4 Mountain View, California 94040

Telephone: 650.965.8731

5 Facsimile: 650.989.2131

6 Attorneys for Defendant

7 **RAJ ABHYANKER**

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 **NEXTDOOR.COM, INC.,**

14 Plaintiff,

15 vs.

16 **RAJ ABHYANKER,**

17 Defendant.

Case No. 3:12-cv-05667-EMC

**DEFENDANT RAJ ABHYANKER'S  
OBJECTION TO PLAINTIFF'S  
EVIDENCE SUBMITTED BY REPLY AND  
REQUEST FOR LEAVE TO FILE  
SURREPLY IN OPPOSITION TO  
MOTION TO DISMISS FOR NON-  
JUSTICIABILITY**

1 Pursuant to L.Civ.R. 7-3(d)(1), defendant Raj Abhyanker hereby objects to the evidence  
2 submitted on reply by plaintiff Nextdoor.com in support of its motion to dismiss the declaratory  
3 relief claim in its complaint.

4 A reply brief is supposed to be just that - for reply to arguments presented in opposition to  
5 a motion. It is not supposed to be a new opportunity for a movant to present evidence in support  
6 of the motion, which, with diligence, could have been presented in the opening motion papers. A  
7 movant who waits to present evidence - especially evidence the movant thinks is compelling or  
8 determinative - on reply undermines the motion process and scuttles the sequence of point-  
9 counterpoint-reply designed to assist the Court in deciding the motion. Presenting new evidence  
10 on reply leaves no established channel for the opposing party to respond to or rebut it. As such,  
11 plaintiff's new evidence presented by way of declaration, and the argument interpreting that  
12 evidence, has no place on reply and should be stricken as not consistent with fair play.

13 In the alternative, defendant requests that the court grant defendant leave to file a short  
14 surreply to take up and rebut the evidence newly-introduced by plaintiff on reply. Such surreplies  
15 have been authorized by this Court in similar situations. *See, e.g., Toomey v. Nextel Commc'ns,*  
16 *Inc.*, Case No. C-03-2887 MMC, 2004 U.S. Dist. LEXIS 30793, at \*2 (N.D. Cal. Sept. 23, 2004)  
17 (granting motion for leave to file surreply to address arguments "raised for the first time in  
18 [defendant's] reply, and purported misstatements of fact in [defendant's] reply"); *Sharper Image*  
19 *Corp. v. Consumers Union of United States, Inc.*, Case No. 03-4094 MMC, 2004 U.S. Dist.  
20 LEXIS 24484 at \*2 n.1 (N.D. Cal. Feb. 23, 2004) (granting motion for leave to file surreply, and  
21 considering the extent surreply "responds to arguments raised first time on reply"). Defendant  
22 has sought plaintiff's position with respect to seeking such leave. Even though plaintiff clearly  
23 understands that it submitted evidence by way of declaration, as well as related argument, only on  
24 reply and not in its moving papers, plaintiff did not give its consent to defendant's request for

25 //

26 //

27 //

28 //

1 leave to file a surreply upon inquiry - instead insisting that it view a draft of the surreply  
2 beforehand. Accordingly, defendant requests that the Court sustain its objection, and/or grant  
3 leave for defendant to file a surreply to the newly-introduced evidence and related argument.  
4

5 Respectfully Submitted,

6 Date: September 4, 2014

/s/David Lavine

David Lavine

7  
8 LegalForce RAPC Worldwide  
9 Attorneys for Defendant Raj Abhyanker  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28